

PROVIDING FOR THE CONSIDERATION OF H.R. 4250, THE
PATIENT PROTECTION ACT OF 1998

JULY 24 (legislative day, JULY 23), 1998.—Referred to the House Calendar and
ordered to be printed

Mr. GOSS, from the Committee on Rules, submitted the following

REPORT

[To accompany H. Res. 509]

The Committee on Rules, having had under consideration House Resolution 509, by a non-record vote, report the same to the House with the recommendation that the resolution be adopted.

BRIEF SUMMARY OF PROVISIONS OF RESOLUTION

The resolution provides for the consideration of H.R. 4250, the “Patient Protection Act of 1998” under a modified closed rule. The rule provides one hour of debate divided equally between Representative Hastert and an opponent.

The rule provides that the amendments accompanying this report shall be considered as adopted.

The rule provides for an amendment printed in the Congressional Record and numbered 2 which shall be considered as read, and shall be debatable for one hour equally divided and controlled by the proponent and an opponent.

Finally, the rule provides for one motion to recommit, with or without instructions.

SUMMARY OF AMENDMENTS CONSIDERED AS ADOPTED BY THE RULE
TO H.R. 4250—PATIENT PROTECTION ACT OF 1998

Change to section 1001 and other corresponding sections. (Regarding Patient Access to Unrestricted Medical Advice): Change includes insertion of words “or restriction.” Provision originally said health plans may not impose “any prohibition” on physicians when communicating with patients. Under revised language, health plans may not impose “any prohibition or restriction.”

Change to section 1001 and other corresponding sections. (Regarding Availability of Health Plan Information): Change includes

clarification that prospective enrollees in health plans can request information specified in the bill.

Change to section 1001 and other corresponding sections. (Regarding Emergency Services): Change includes clarification that patients may, under certain circumstance, seek emergency room services from any emergency room provider.

Change to section 1201 and other corresponding sections. (Regarding Disclosure): Change includes insertion of paragraph which requires health plans to provide information relating to the number of external reviews that have been completed and the modification and reversals of internal decisions.

Change to section 1201. (Regarding External Appeals): Change includes raising the amount of penalties which may be assessed in court actions in connection with group health plans. Provision originally said civil penalty could be in the amount of up to \$250 a day, up to a total amount not to exceed \$100,000. New provisions would permit penalties up to \$500 a day (or up to \$1,000 a day in the case of bad faith), up to a total amount not to exceed \$250,000.

Change to section 1201 and section 3102. (Regarding Fraud and Abuse Enforcement Activities.): Change includes moving the location of provision to Title IV.

Change to section 2102. (Regarding HealthMarts.) Change adds an effective date, January 1, 2000, for the implementation of HealthMarts.

Change to section 5001. (Regarding Confidentiality of Medical Records.): Change includes prohibition on health care providers and health plans from selling protected health information as part of conducting health care operations.

Addition of New Subtitle D—(Regarding Revenue Offsets for Medical Savings Account Provisions): Addition consists of six revenue offsets to cover the revenue cost of the Medical Savings Account provisions contained in H.R. 4250 as follows: (1) restrict 10-year net operating loss carryback rules for specified liability losses, (2) clarify the meaning of “subject to” liabilities under IRC section 357(c), (3) limit the use of non-accrual experience method of accounting to amounts to be received for the performance of qualified professional services, (4) information returns relating to the discharge of July 23, 1998 indebtedness by certain entities, (5) clarify and expand the mathematical error procedures, and (6) add vaccines against rotavirus gastroenteritis to the list of taxable vaccines.

Addition of New Section (Regarding Sense of the House): It is the sense of the House that patients are best served when they are empowered to make informed choices about their own healthcare. The same is true regarding an individuals choice of health insurance. A system that gives people the power to choose the coverage that best meets their needs, combined with insurance market reforms, offers great promise of increased choices and greater access to health insurance for Americans.

Addition of New Section (Regarding Effective Date for Standards Governing Unique Health Identifiers For Individuals): Secretary of Health & Human Services shall not promulgate final standards to go into effect for unique health identifiers until legislation is enacted specifically approving the standard.

Deletion of Subtitle VI (Regarding Medical Savings Accounts in the Federal Employee Health Benefits Program (FEHBP). Change deletes the Subtitle.

Amendments considered as adopted by the rule:

Page 2, after line 5, in the heading relating to subtitle A of title I, strike the period at the end.

Page 5, line 12, strike “sections” and insert “section”.

Page 6, line 5, insert “or restriction” after “prohibition”.

Page 7, line 15, insert “and without regard to otherwise applicable network limitations” after “preauthorization”.

Page 26, insert after line 24 the following:

“(ix) INFORMATION RELATING TO EXTERNAL REVIEWS.—The number of external reviews under section 503(b)(4) that have been completed during the prior plan year and the number of such reviews in which the recommendation reported under section 503(b)(4)(C)(iii) includes a recommendation for modification or reversal of an internal review decision under the plan.

Page 28, line 9, insert “(and an employee who, under the terms of the plan, is eligible for coverage but not enrolled)” after “participant”.

Page 61, line 14, strike “\$250” and insert “\$500”.

Page 61, line 14, insert “(or up to \$1,000 a day in the case of a bad faith failure)” after “a day”.

Page 61, line 17, strike “\$100,000” and insert “\$250,000”.

Page 63, strike line 23 and insert the following:

amended by striking “, or (6)” and inserting “, (6), or (7)”.

Page 136, line 14, strike “Act” and insert “subtitle”.

Page 142, line 5, insert “or restriction” after “prohibition”.

Page 143, line 16, insert “and without regard to otherwise applicable network limitations” after “preauthorization”.

Page 165, insert after line 2 the following:

“(ix) INFORMATION RELATING TO EXTERNAL REVIEWS.—The number of external reviews under section 503(b)(4) of the Employee Retirement Income Security Act of 1974 that have been completed during the prior plan year and the number of such reviews in which the recommendation reported under section 503(b)(4)(C)(iii) of such Act includes a recommendation for modification or reversal of an internal review decision under the plan.

Page 166, line 11, insert “(and an employee who, under the terms of the plan, is eligible for coverage but not enrolled)” after “participant”.

Page 167, strike line 14 and all that follows through line 13 on page 168 (and make necessary conforming changes to the table of contents).

Page 168, line 14, strike “**2103**” and insert “**2102**” (and make necessary conforming changes to the table of contents).

Page 169, line 10, insert “(a) IN GENERAL.—” before “The”.

Page 194, after line 17, insert the following:

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on January 1, 2000. The Secretary of Health and

Human Services shall first issue all regulations necessary to carry out such amendment before such date.

Page 205, line 3, insert “or restriction” after “prohibition”.

Page 206, line 10, insert “and without regard to otherwise applicable network limitations” after “preauthorization”.

Page 222, insert after line 21 the following:

“(ix) INFORMATION RELATING TO EXTERNAL REVIEWS.—The number of external reviews under section 503(b)(4) of the Employee Retirement Income Security Act of 1974 that have been completed during the prior plan year and the number of such reviews in which the recommendation reported under section 503(b)(4)(C)(iii) of such Act includes a recommendation for modification or reversal of an internal review decision under the plan.

Page 224, line 3, insert “(and an employee who, under the terms of the plan, is eligible for coverage but not enrolled)” after “participant”.

Page 225, strike line 8 and all that follows through line 9 on page 226 (and make necessary conforming changes to the table of contents).

Page 226, line 10, strike “**3103**” and insert “**3102**” (and make necessary conforming changes to the table of contents).

Page 233, insert after line 3 the following (and make necessary conforming changes to the table of contents):

SEC. 3203. SENSE OF THE HOUSE OF REPRESENTATIVES.

It is the sense of the House of Representatives that patients are best served when they are empowered to make informed choices about their own health care. The same is true regarding an individual’s choice of health insurance. A system that gives people the power to choose the coverage that best meets their needs, combined with insurance market reforms, offers great promise of increased choices and greater access to health insurance for Americans.

Subtitle D—Revenue Offsets

SEC. 3301. CLARIFICATION OF DEFINITION OF SPECIFIED LIABILITY LOSS.

(a) IN GENERAL.—Subparagraph (B) of section 172(f)(1) of the Internal Revenue Code of 1986 (defining specified liability loss) is amended to read as follows:

“(B)(i) Any amount allowable as a deduction under this chapter (other than section 468(a)(1) or 468A(a)) which is in satisfaction of a liability under a Federal or State law requiring—

- “(I) the reclamation of land,
- “(II) the decommissioning of a nuclear power plant (or any unit thereof),
- “(III) the dismantlement of a drilling platform,
- “(IV) the remediation of environmental contamination, or
- “(V) a payment under any workers compensation act (within the meaning of section 461(h)(2)(C)(i)).

“(ii) A liability shall be taken into account under this subparagraph only if—

“(I) the act (or failure to act) giving rise to such liability occurs at least 3 years before the beginning of the taxable year, and

“(II) the taxpayer used an accrual method of accounting throughout the period or periods during which such act (or failure to act) occurred.”

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to net operating losses arising in taxable years ending after the date of the enactment of this Act.

SEC. 3302. PROPERTY SUBJECT TO A LIABILITY TREATED IN SAME MANNER AS ASSUMPTION OF LIABILITY.

(a) **REPEAL OF PROPERTY SUBJECT TO A LIABILITY TEST.**—

(1) **SECTION 357.**—Section 357(a) of the Internal Revenue Code of 1986 (relating to assumption of liability) is amended by striking “, or acquires from the taxpayer property subject to a liability” in paragraph (2).

(2) **SECTION 358.**—Section 358(d)(1) of such Code (relating to assumption of liability) is amended by striking “or acquired from the taxpayer property subject to a liability”.

(3) **SECTION 368.**—

(A) Section 368(a)(1)(C) of such Code is amended by striking “, or the fact that property acquired is subject to a liability,”.

(B) The last sentence of section 368(a)(2)(B) of such Code is amended by striking “, and the amount of any liability to which any property acquired from the acquiring corporation is subject,”.

(b) **CLARIFICATION OF ASSUMPTION OF LIABILITY.**—

(1) **IN GENERAL.**—Section 357 of such Code is amended by adding at the end the following new subsections:

“(d) **DETERMINATION OF AMOUNT OF LIABILITY ASSUMED.**—

“(1) **IN GENERAL.**—For purposes of this section, section 358(d), section 362(d), section 368(a)(1)(C), and section 368(a)(2)(B), except as provided in regulations—

“(A) a recourse liability (or portion thereof) shall be treated as having been assumed if, as determined on the basis of all facts and circumstances, the transferee has agreed to, and is expected to, satisfy such liability (or portion), whether or not the transferor has been relieved of such liability, and

“(B) a nonrecourse liability shall be treated as having been assumed by the transferee of any asset subject to such liability.

“(2) **REGULATIONS.**—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and section 362(d). The Secretary may also prescribe regulations which provide that the manner in which a liability is treated as assumed under this subsection is applied, where appropriate, elsewhere in this title.”

(2) **LIMITATION ON BASIS INCREASE ATTRIBUTABLE TO ASSUMPTION OF LIABILITY.**—Section 362 of such Code is amended by adding at the end the following new subsection:

“(d) LIMITATION ON BASIS INCREASE ATTRIBUTABLE TO ASSUMPTION OF LIABILITY.—

“(1) IN GENERAL.—In no event shall the basis of any property be increased under subsection (a) or (b) above fair market value (determined without regard to section 7701(g)) by reason of any gain recognized to the transferor as a result of the assumption of a liability.

“(2) TREATMENT OF GAIN NOT SUBJECT TO TAX.—Except as provided in regulations, if—

“(A) gain is recognized to the transferor as a result of an assumption of a nonrecourse liability by a transferee which is also secured by assets not transferred to such transferee, and

“(B) no person is subject to tax under this title on such gain,

then, for purposes of determining basis under subsections (a) and (b), the amount of gain recognized by the transferor as a result of the assumption of the liability shall be determined as if the liability assumed by the transferee equaled such transferee’s ratable portion of such liability determined on the basis of the relative fair market values (determined without regard to section 7701(g)) of all of the assets subject to such liability.”

(c) APPLICATION TO PROVISIONS OTHER THAN SUBCHAPTER C.—

(1) SECTION 584.—Section 584(h)(3) of such Code is amended—

(A) by striking “, and the fact that any property transferred by the common trust fund is subject to a liability,” in subparagraph (A),

(B) by striking clause (ii) of subparagraph (B) and inserting:

“(ii) ASSUMED LIABILITIES.—For purposes of clause (i), the term ‘assumed liabilities’ means any liability of the common trust fund assumed by any regulated investment company in connection with the transfer referred to in paragraph (1)(A).

“(C) ASSUMPTION.—For purposes of this paragraph, in determining the amount of any liability assumed, the rules of section 357(d) shall apply.”.

(2) SECTION 1031.—The last sentence of section 1031(d) of such Code is amended—

(A) by striking “assumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability” and inserting “assumed (as determined under section 357(d)) a liability of the taxpayer”, and

(B) by striking “or acquisition (in the amount of the liability)”.

(d) CONFORMING AMENDMENTS.—

(1) Section 351(h)(1) of such Code is amended by striking “, or acquires property subject to a liability,”.

(2) Section 357 of such Code is amended by striking “or acquisition” each place it appears in subsection (a) or (b).

(3) Section 357(b)(1) of such Code is amended by striking “or acquired”.

(4) Section 357(c)(1) of such Code is amended by striking “, plus the amount of the liabilities to which the property is subject,”.

(5) Section 357(c)(3) of such Code is amended by striking “or to which the property transferred is subject”.

(6) Section 358(d)(1) of such Code is amended by striking “or acquisition (in the amount of the liability)”.

(e) **EFFECTIVE DATE.**—The amendments made by this section shall apply to transfers after the date of the enactment of this Act.

SEC. 3303. LIMITATION ON REQUIRED ACCRUAL OF AMOUNTS RECEIVED FOR PERFORMANCE OF CERTAIN PERSONAL SERVICES.

(a) **IN GENERAL.**—Paragraph (5) of section 448(d) of the Internal Revenue Code of 1986 (relating to special rule for services) is amended by inserting “in fields referred to in paragraph (2)(A)” after “services by such person”.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1998.

(c) **COORDINATION WITH SECTION 481.**—In the case of any taxpayer required by this section to change its method of accounting for any taxable year—

(1) such change shall be treated as initiated by the taxpayer,

(2) such change shall be treated as made with the consent of the Secretary of the Treasury, and

(3) the period for taking into account the adjustments under section 481 by reason of such change shall be 3 years.

SEC. 3304. RETURNS RELATING TO CANCELLATIONS OF INDEBTEDNESS BY ORGANIZATIONS LENDING MONEY.

(a) **IN GENERAL.**—Paragraph (2) of section 6050P(c) of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by striking “and” at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting “, and”, and by inserting after subparagraph (C) the following new subparagraph:

“(D) any organization a significant trade or business of which is the lending of money.”

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to discharges of indebtedness after December 31, 1998.

SEC. 3305. CLARIFICATION AND EXPANSION OF MATHEMATICAL ERROR ASSESSMENT PROCEDURES.

(a) **TIN DEEMED INCORRECT IF INFORMATION ON RETURN DIFFERS WITH AGENCY RECORDS.**—Section 6213(g)(2) of the Internal Revenue Code of 1986 (defining mathematical or clerical error) is amended by adding at the end the following flush sentence:

“A taxpayer shall be treated as having omitted a correct TIN for purposes of the preceding sentence if information provided by the taxpayer on the return with respect to the individual whose TIN was provided differs from the information the Secretary obtains from the person issuing the TIN.”

(b) **EXPANSION OF MATHEMATICAL ERROR PROCEDURES TO CASES WHERE TIN ESTABLISHES INDIVIDUAL NOT ELIGIBLE FOR TAX CREDIT.**—Section 6213(g)(2) of such Code is amended by striking “and” at the end of subparagraph (J), by striking the period at the end

of the subparagraph (K) and inserting “, and”, and by adding at the end the following new subparagraph:

“(L) the inclusion on a return of a TIN required to be included on the return under section 21, 24, or 32 if—

“(i) such TIN is of an individual whose age affects the amount of the credit under such section, and

“(ii) the computation of the credit on the return reflects the treatment of such individual as being of an age different from the individual’s age based on such TIN.”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 3306. INCLUSION OF ROTAVIRUS GASTROENTERITIS AS A TAXABLE VACCINE.

(a) **IN GENERAL.**—Section 4132(1) of the Internal Revenue Code of 1986 (defining taxable vaccine) is amended by adding at the end the following new subparagraph:

“(K) Any vaccine against rotavirus gastroenteritis.”.

(b) **EFFECTIVE DATE.**—

(1) **SALES.**—The amendment made by this section shall apply to sales after the date of the enactment of this Act.

(2) **DELIVERIES.**—For purposes of paragraph (1), in the case of sales on or before the date of the enactment of this Act for which delivery is made after such date, the delivery date shall be considered the sale date.

Page 249, insert after line 22 the following (and make necessary conforming changes to the table of contents):

SEC. 4014. REPORTING ON FRAUD AND ABUSE ENFORCEMENT ACTIVITIES.

The General Accounting Office shall—

(1) monitor—

(A) the compliance of the Department of Justice and all United States Attorneys with the guideline entitled “Guidance on the Use of the False Claims Act in Civil Health Care Matters” issued by the Department on June 3, 1998, including any revisions to that guideline, and

(B) the compliance of the Office of the Inspector General of the Department of Health and Human Services with the protocols and guidelines entitled “National Project Protocols—Best Practice Guidelines” issued by the Inspector General on June 3, 1998, including any revisions to such protocols and guidelines, and

(2) submit a report on such compliance to the Committee on Commerce, the Committee on the Judiciary, and the Committee on Ways and Means of the House of Representatives and the Committee on the Judiciary and the Committee on Finance of the Senate not later than February 1, 1999, and every year thereafter for a period of four years ending February 1, 2002.

Page 259, line 9, insert “(a)” after “SEC. 1185.”.

Page 259, after line 16, insert the following:

“(c) **LIMITATION ON SALE OR BARTER.**—Notwithstanding subsection (b), no health care provider or health plan may, as part of

conducting health care operations, sell or barter protected health information.

Page 280, line 12, strike “thereof))” and “thereof”).

Page 287, beginning on line 4, strike “the Federal Employees Health Care Freedom of Choice Act,” and insert “the Patient Protection Act of 1998,”.

Page 287, beginning on line 9, strike “the Federal Employees Health Care Freedom of Choice Act,” and insert “the Patient Protection Act of 1998,”.

Page 289, strike lines 16 through 24 and insert the following:

SEC. 6002. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by this title shall apply—

(1) in the case of employees, with respect to contract years beginning on or after January 1, 2000; and

(2) in the case of annuitants, with respect to contract years beginning on or after January 1, 2001.

(b) AVAILABILITY OF COVERAGE.—The Office of Personnel Management shall take appropriate measures to ensure that coverage under a high deductible health plan under chapter 89 of title 5, United States Code (as amended by this title) shall be available—

(1) in the case of employees, as of the beginning of the first contract year referred to in subsection (a)(1); and

(2) in the case of annuitants, as of the beginning of the first contract year referred to in subsection (a)(2).

(c) DEFINITIONS.—For purposes of this section, the terms “employee” and “annuitant” have the meanings given them by section 8901 of title 5, United States Code.

Page 278, after line 24, insert the following (and amend the table of contents accordingly):

SEC. 5005. EFFECTIVE DATE FOR STANDARDS GOVERNING UNIQUE HEALTH IDENTIFIERS FOR INDIVIDUALS.

Section 1174 of the Social Security Act (42 U.S.C. 1320d–3) is amended by adding at the end the following:

“(c) UNIQUE HEALTH IDENTIFIERS.—Notwithstanding subsections (a) and (b), the Secretary may not promulgate or adopt a final standard under section 1173(b) providing for a unique health identifier for an individual (except in an individual’s capacity as an employer or a health care provider), until legislation is enacted specifically approving the standard or containing provisions consistent with the standard.”.

Strike title VI (page 279, line 1 through page 289, line 24) and conform the table of contents accordingly.